

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT**

JANE DOE,)
)
Plaintiff,)
)
vs.)
)
RANDY ESPHORST,)
GASCONADE COUNTY, MISSOURI,)
And MARTY RAINEY,)
)
Defendants.)

Case No.: 4:15-CV-01484-AGF

**PLAINTIFF'S MOTION FOR SUBSTITUTION OF PARTY
REGARDING DECEASED DEFENDANT MARTY RAINEY**

COMES NOW, Plaintiff Jane Doe, by and through her attorneys, and pursuant to Federal Rue of Civil Procedure 25(2)(1), respectfully moves to substitute Daniel J. Briegel, the Personal Representative of the Estate of Marty Rainey, in the place and stead of now-deceased Defendant Marty Rainey. In support of the Motion, Plaintiff states as follows:

1. Defendant Marty Rainey died on or about March 26, 2016.
2. Defendant's Suggestions of Death of Defendant Marty Rainey was filed March 28, 2016.
3. Pursuant to Federal Rule of Civil Procedure 25, a Motion for Substitution of Party may be made by any party or by the decedent's successor or representative, and is to be made within 90 days after service of the statement noting the death.
4. Plaintiff has filed timely motions for extensions of time in which to file the Motion for Substitution of Party in order to allow time for the appointment of a personal representative of the estate of Marty Rainey in the Probate Court of Franklin County, Missouri.

5. By Letters of Administration granted dated October 21, 2016, the Honorable David J. Tobben, in case number 16AB-PR00386, in the Circuit Court of Franklin County, Missouri, appointed Daniel J. Briegel, 4A S. Church St. Union, Missouri 63084-1802, as the Personal Representative of the estate of Marty L. Rainey, decedent. A copy of said Letters of Administration is attached hereto as Exhibit 1 and incorporated herein by reference.
6. This Motion for Substitution of Party is therefore timely filed within the extension periods previously requested by Plaintiff and granted by the Court.
7. Under 42 U.S.C. section 1988, courts are directed to apply the state's survival law as long as the result is not inconsistent with the United States Constitution and its law. *Robertson v. Wegmann*, 436 U.S. 584, 589, 98 S.Ct. 1991, 1994, 56 L.Ed.2d 554,566 (1978); *Parkerson v. Garruth*, 782 F.2d 1449, 1451 n. 3 (8th Cir.1986).
8. Section 537.020 RSMo. states in pertinent part that causes of action for personal injuries ... whether such injuries be to the health or to the person of the injured party, shall not abate by reason ... of the death of the person against whom such cause of action shall have accrued.
9. Section 537.021 RSMo. states that should the plaintiff in such cause of action desire to satisfy any portion of a judgment rendered thereon out of the assets of the estate of such deceased wrongdoer, such action shall be maintained against a personal representative appointed by the probate division of the circuit court and the plaintiff shall comply with the provisions of the probate code with respect to claims against decedent's estates.

WHEREFORE, Plaintiff requests the Court to enter an order substituting Daniel J. Briegel, the Court appointed Personal Representative of the estate of Marty Rainey, Franklin County, Missouri case number 16AB-PR00386, as Defendant in the place and stead of Marty Rainey, deceased, and for such other and further orders as the Court deems just in the premises.

Respectfully Submitted,

/s/Michael S. Holder

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ATTORNEY FOR PLAINTIFF JANE DOE

CERTIFICATE OF SERVICE

Pursuant to the Court's Efiling system and rules, the opposing party will be served with notice of this filing and access to this filing such that other service is not required.